



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Comm
CORR

November 26, 1979

MEMORANDUM FOR: Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Commissioner Ahearne

FROM: Joseph M. Hendrie *J. M. Hendrie*

SUBJECT: COMMISSION ROLE IN EMERGENCY RESPONSE

We have before us OPE's memorandum of October 30, 1979, on the Commission's role in emergency response, several comments by Commissioners Ahearne and Bradford, and a recent OGC note on language to fix the Atomic Energy Act to allow delegation of Commission powers to a Commissioner in emergency situations.

1. OPE's October 30th memorandum:

The proposed Commission role is quite a good attempt to hit the midpoint of remarks at the meeting we had on this subject. I don't agree with aspects of the proposal, but commend the authors for their effort.

First, I agree with the general proposition that we should do as good a job as we reasonably can do in pre-event planning. But it is futile to hope that emergency situations can be anticipated in sufficient detail for all cases so that the NRC's emergency response can be "automatic," with decisions pre-programmed according to criteria and guidelines that will relieve the need for on-the-spot judgments. The one assured aspect of emergencies is that they will have unique features and will require event-specific evaluations, judgments, and decisions.

Second, the EDO should certainly be delegated authority to issue orders to licensees. I would do it on a general basis, and not limit the delegation to emergencies.

Third, the current OPE proposal has the Chairman present at the Response Center in a consultative role, with his main chore apparently being one of keeping well-informed and acting as the single information channel to the Commissioners. He would presumably convene the Commission for "policy-making" as needed and on those matters for which there is time and it is appropriate for the Commission to make the decision for the NRC. I do not think this arrangement is adequate.

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I continue to think that Commissioners are going to have to take a more direct role, and more responsibility, for emergency responses of the agency. That was not my view pre-Three Mile, I must admit. I deliberately stayed away from the Response Center on Wednesday evening and Thursday in that case because I thought the senior staff would do better with the response if they were left to do their job without having the Chairman hanging over their shoulders. I have since concluded that was a mistake. Had I been at the Response Center during that time I would have been much better informed about the overall situation and some of the early staff concerns, and might have been able to make some positive contribution to our response.

Post-Three Mile, I am convinced that it is just not going to be acceptable to have the appointed heads of the agency stand back in an emergency and leave the staff responsible for the tough decisions. I think the public, Congress, and State and local officials are going to want to know that NRC decisions and recommendations in an emergency are being made and backed by the Commission or an assigned Commissioner and that the responsibility for those decisions and recommendations rests with the Commission through the assigned Commissioner.

The emergency response configuration of the Commission that I suggest is that the Chairman or, in his absence, the Acting Chairman sit with the Emergency Management Team as its head and be responsible for its decisions. If the emergency is an extended one, the next senior Commissioner should spell the Chairman or Acting Chairman as needed. The other Commissioners should be close to the Response Center, keep informed, and carry out liaison and coordination functions with the oversight chairmen, the White House, and other Federal agencies (notably FEMA) as assigned by the Chairman or Acting Chairman. I would try to divide these functions into two areas, probably Congressional liaison for one and White House/FEMA for the other, so that a lead Commissioner could be assigned to each and still have some relief and back-up capability among the five of us.

2. Commissioner memoranda on emergency response:

There are assorted useful comments and suggestions in the memoranda from Commissioners Ahearne and Bradford. Their comments on coming rapidly to agreement with FEMA on who coordinates what with other Federal, State, and local government agencies, and on the method of transmitting health and safety recommendations are particularly to the point. I agree with most of Commissioner Ahearne's November 8th comments on emergency response as a factor in determining the management of the NRC:

- The utility does indeed have major responsibility for emergency response--certainly for the on-site response, and for recommendations for off-site actions as well if time is short.
- As time permits, decision authority can move up the chain. Each level of authority must be able to decide whether a decision question should be made at that level or can be passed on.
- NRC will be looked to for guidance and must have plans in place to act effectively.
- NRC's emergency response organization need not, and probably should not follow the regular organizational structure, particularly at the upper end.
- Emergency response has no bearing on the best management structure for NRC.

I differ on the question of whether the head of NRC's emergency response structure should be a Commissioner, as is clear from my suggestions in the previous section. Persons best suited to understand the technology of, and the NRC resources available to deal with a particular kind of emergency certainly should be on the Emergency Management Team and close by in the supporting staffs. These staff officers can advise the team head and on technical points and staff assignment decisions I would expect their advice to be adopted. But I continue to think a Commissioner has to be there, as team head, to put the Commission's stamp on decisions and to bear on behalf of the Commission the responsibility for agency decisions. I think the post-Three Mile expectations as to NRC's response in an emergency make that configuration necessary, and override any questions about our lack of technical expertise. Further, as other Commissioners have pointed out, the really hard questions in an emergency are going to be on recommendations for off-site protective actions, and most likely in a situation in which either there will not be substantial technical questions or the technical questions will be so clouded by information uncertainties that it will still be more a judgment call than a technical determination. I think Commissioners are likely to be as good as anyone in the agency in that sort of broad public interest and judgment call decision-making and are certainly the people who will be expected to be responsible for that kind of decision.

3. OGC's November 21st memorandum:

I had asked the General Counsel for suggested language to amend the statutes to allow delegation in an emergency situation to a Commissioner of the Commission's powers to issue orders to licensees, etc. His

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memorandum provides such language. It is simple and to the point. I urge most strongly the favorable response of Commissioners and a speedy communication to Congress to request the amendment. Action probably would not be taken until the next session of the 96th Congress, but it should be requested promptly now that the deficiency has been identified.

In support of the amendment, I argue that it is needed independent of the Commission's final decision on whether a Commissioner heads the Emergency Management Team or not.

If I can convince a majority of us that my proposal that the Chairman or a Commissioner should head the team is the right way to go, the amendment is clearly needed.

If a majority of you convince or outvote me and something along the line of the OPE October 30th arrangement is adopted, it is still needed. I trust there is no disagreement among us that in any future emergency the Commissioners should be close to the situation and at least some Commissioners present at the Response Center. Our differences are on whether a Commissioner should actually head the management team there or should be in a close consultative role. Even in the latter case, I think the Commission authority delegation should be available to cover situations we cannot now foresee. Further, now that this peculiar quirk of the statutes has been identified and commented on in Congressional hearings and the press, I am afraid that a failure on our part to ask promptly for a legislative remedy will be widely interpreted as a refusal by the Commission to face its responsibilities in an emergency.

I should add that I do not see any similar concern attaching to our decision on the "team head" vs. "close consultation" question for the Commission role. While I do not agree with it, a rational case can be made for the consultative option and it does put the Chairman and Commissioners close to the Emergency Management Team and able to confirm and support decisions. But ignoring the delegation of powers deficiency in the statute will send a most unfortunate signal to all kinds of people who will not bother to examine and judge fairly the details of our emergency response arrangements for the Commission.

cc: SECY
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